

**19 July 2011**

**To: The Principal Registrar  
Victorian Civil and Administrative Tribunal  
Ground Floor, 55 King Street  
Melbourne 3000**

**From: Beaumaris Conservation Society Inc.  
PO Box 7016  
BEAUMARIS 3193**

**Re: 3 John Street  
BEAUMARIS  
Reference No P31/2011**

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### **Background**

The following objection is made by Beaumaris Conservation Society Incorporated (BCS) to the proposal at 3 John Street Beaumaris to construct two dwellings.

Beaumaris has a special character defined by the extensive coastal border to Port Phillip Bay, undulating topography and a strong vegetation character of canopy trees, heathland and bush. Recognising the need to both protect and promote this special character the Beaumaris Conservation Society Inc was formed 58 years ago as the Beaumaris Tree Preservation Society (BTPS). The name was changed to the Beaumaris Conservation Society (BCS) in 1970. BCS Inc. has a long and dedicated history of protecting and promoting the vegetation character of Beaumaris.

From the 1950's Beaumaris experienced major change from subdivision as it became a major residential suburb. Despite pressure from development Beaumaris retained a strong vegetation character and many residents chose to build modest homes set amongst the trees and bush.

One of the finest examples of Beaumaris vegetation character can be observed in the southern end of the suburb at Point and Coral Avenues. Recognising the character of these streets, the Bayside Planning Scheme Amendment C80 Panel Report May 2011 recommended these streets be protected by a Significant Landscape Overlay.

In recent years the push for medium density development and large single dwellings has caused some of the most dramatic change with the distinctive vegetation character unable to withstand the overwhelming impact of site moonscaping and large dwellings that have compromised the available space for replacement vegetation.

In response to this threat a Vegetation Protection Overlay covering all of Beaumaris was introduced in 2003. This VPO has had some, but limited success in protecting Beaumaris vegetation character. More recently, Bayside Council in March 2010<sup>1</sup> resolved that an amendment to the Bayside Planning Scheme be drafted to require residential development to set aside specific areas on properties for vegetation. Council is currently reviewing the strategic justification for this resolution<sup>2</sup>. The undertaking of this strategic work shows the commitment of Bayside Council to ensuring the Bayside planning scheme gives clear direction to planners and developers on meeting the expectations for protecting vegetation character in Bayside.

### **Summary of BCS Inc. Objection**

Our objection is based on non-compliance with site coverage side setback requirements and a lack of provision for vegetation consistent with State and Local planning policies and the existing and preferred neighbourhood character.

Our submission will address relevant State and Local Policy pertaining to Beaumaris neighbourhood character with particular reference to vegetation character.

### **State Planning Policy**

State Planning Policy requires:

*Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*

State Planning Policy details a number of policies that must be taken into account when planning authorities and responsible authorities make decisions about planning. The proposal for medium density development at 3 John St Beaumaris can be supported by several State Planning policies and we refer to Part 16: Housing which states:

*Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.*

To support this statement Part 16 contains the following objectives:

- To promote a housing market that meets community needs
- To locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.
- To provide for a range of housing types to meet increasingly diverse needs.

The objectives and strategies of State Planning Policy may support a proposal for medium density development at 3 John St Beaumaris. However, to be successful the proposal must survive conflict with critical objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. In this regard State Planning Policy includes a number of policies relevant for balancing these conflicting objectives

We refer to Part 15: Built Environment and Heritage:

*Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value. Creating quality built environments supports the social, cultural, economic and environmental wellbeing of our communities, cities and towns. Land use and development planning must support the development and maintenance of communities with adequate and safe physical and social environments for their residents, through the appropriate location of uses and development and quality of urban design.*

*Planning should achieve high quality urban design and architecture that:*

- *Contributes positively to local urban character and sense of place.*
- *Reflects the particular characteristics, aspirations and cultural identity of the community.*
- *Enhances liveability, diversity, amenity and safety of the public realm.*
- *Promotes attractiveness of towns and cities within broader strategic contexts.*
- *Minimises detrimental impact on neighbouring properties.*

## Beaumaris Vegetation Character and Sense of Place

A critical element of Beaumaris urban character is the character defined by vegetation. Today this vegetation character is protected and promoted by the Vegetation Protection Overlay VPO3.

Built environment and heritage State Planning Policy states planning should achieve high quality urban design and architecture that reflects the particular characteristics, aspirations and cultural identity of the community. To gain an insight of the nature and importance of vegetation character in Beaumaris and the contribution it makes to cultural identity we refer you to the City of Bayside Vegetation Character Assessment report<sup>3</sup> which recommended the introduction of a VPO for Beaumaris and Black Rock and the Amendment C2 panel report<sup>4</sup> which recommended implementing the VPO.

On page 91 of their report the panel stated:

*An in-centre survey of 200 Bayside residents identified that the important physical qualities in the Bayside environment are the amenity of the area (42% of the responses), which includes elements such as streetscape, housing style and quality, and the beach (26%) which was also identified as a valued element of the Bayside environment. Vegetation management in both the public and private realms was identified as an extremely significant element of the amenity of Bayside. **Trees were clearly defined as an extremely important element of the streetscapes throughout the City, with 72% of the residents placing primary importance on vegetation.** Issues of concern included the use of native and exotic species, tree replacement, tree clearing and maintenance of Crown land and weed control.*

The overview of vegetation character in Bayside in the City of Bayside Vegetation Character Assessment report states:

*The dominant vegetation contribution is generally located in the public space in the form of street tree planting. The exception is in the Black Rock and Beaumaris area where there is a high frequency of both private and public spaces contributing equally to vegetation character with similar or complementary species. The condition of trees is generally good.*

On page 15 the report makes the following observations about vegetation character in Beaumaris:

### 8.9 Beaumaris

Overall **a high density of vegetation** cover in both the streetscape and private space, making **vegetation the dominant element of streetscape character**. In comparison with other areas, Beaumaris has a higher density of both canopy and shrub layers, the majority of which is native or indigenous species.

Private gardens tend to have high proportion of canopy trees, particularly eucalypts, which relate well with the street tree character. Dwellings tend to be screened from the road.

### Vegetation Protection Overlay VPO3

The VPO makes the following statement of nature and significance of vegetation to be protected:

*The Vegetation Character Assessment (March 2000) report identifies significant vegetation characteristics that form a major element of a distinctive urban character in the municipality, particularly in Beaumaris and Black Rock. Remnant indigenous vegetation, complemented by plantings of Australian native species, contribute to the visual amenity and interest of the area, particularly where this vegetation is contiguous between private lands and adjoining public lands.*

The panel comments, statements in the Bayside Vegetation Character Assessment report and the VPO provide a consistent assessment that vegetation is a major determinant of the neighbourhood character in Beaumaris. As the Vegetation Character Assessment report states, vegetation in both the private and streetscape for Beaumaris makes vegetation the dominant element of streetscape character.

The Bayside Vegetation Character Assessment was also referenced in the development of the Bayside neighbourhood character review<sup>5</sup> and policy to provide an understanding of the links between the vegetation character and neighbourhood character objectives.

## Neighbourhood Character Policy

The neighbourhood character policy defines the preferred future character for Area H3 where 3 John Street is located.

The description of preferred future character states that the bushy gardens surrounding the dwellings dominate the streetscapes and that adequate space - and we stress the words adequate space - is provided around dwellings for the retention and planting of vegetation, and indigenous canopy trees are common. The future character objective seeks to avoid a lack of landscaping and substantial vegetation.

The preferred future character objective also talks about maintaining the rhythm of spacious visual separation between buildings and ensuring adequate space is provided around buildings for the retention and planting of vegetation. This requires a design response where buildings should be sited to create the appearance of space between buildings and accommodate vegetation.

In summary, an appropriate vegetation response for Beaumaris includes protecting and planting native and preferably indigenous trees, and it includes a vegetation response that provides a comparatively high density and dominance of vegetation. As stated in the preferred character statement, a vegetation response should provide adequate space to avoid a lack of substantial vegetation.

### The Proposal at 3 John Street

The proposal for 3 John Street Beaumaris comprises two dwellings of which unit one has total living space of 353 square metres and unit two 316 square metres. Excluding garages and roof terraces the living space is 289 square metres and 262 square metres for unit one and two respectively.

At 289 square metres and 262 square metres the proposal for 3 John Street Beaumaris comprises two dwellings of very generous living areas. These dwellings reflect a trend in Australia for larger houses with Australian Bureau of Statistics<sup>6</sup> figures showing that the average size of Victorian homes from 1984-85 to 2002-03 have increased 36% to 222.4 m<sup>2</sup>, and for other dwellings such as townhouses the increase over this period is 39% to 140m<sup>2</sup>.

The consequence of considerable dwelling size growth is a severe contraction of space for vegetation and recreation and in Beaumaris the predominant and valued vegetation character is being undermined by the increasing size of single and medium density housing. The proposal for 3 John Street Beaumaris comprises two dwellings of substantial proportions that limit the opportunities for the spread of vegetation consistent with the prevailing and preferred neighbourhood character detailed in the Bayside Planning Scheme Neighbourhood Character Policy. A proposal for two dwellings of more modest proportions could balance the State policy requirement to increase the supply and diversity of housing while also positively contributing to the local urban character and sense of place.

There are numerous examples of emerging medium density and single development in Beaumaris - which some may argue are representative criteria for preferred neighbourhood character. Unfortunately these developments are inappropriate to Beaumaris due to visual bulk, inadequate provision for vegetation (including canopy vegetation) and the planting of exotics.

Applying examples of *inappropriate* emerging character is an entirely improper criteria and we urge the Tribunal not to apply that particular criteria.

The proposal requires the removal of a mature and bushy street tree and a substantial amount of other vegetation. While the vegetation is not considered significant or indigenous its removal will contribute negatively to local urban character and sense of place for an extended period of time. Without reasonable space for vegetation the loss of urban character and sense of place will be permanent. Moreover, no assessment was provided in the report to Council on the impact this vegetation removal will have on native birds and animals that rely on this vegetation for habitat including sustenance and the impact which displaced birds and particularly animals will have on surrounding vegetation.

The streetscape of John Street and nearby streets that run off the Beaumaris Concourse are typical of Beaumaris neighbourhood and vegetation character. The properties in John Street are generally of modest proportions with single driveway access, reasonable space in the front setback and along one boundary for the spread of medium and canopy vegetation. While gardens may not be landscaped and primed for display, the informal garden settings have long been a fundamental aspect of Beaumaris character.

The planning officer's report to Council on December 7 2010 states the proposal is not located in the residential hinterland which is characterised by detached dwellings set in landscaped gardens but adjacent to the Beaumaris Concourse. While medium density may be justified by its location to the Concourse it is incorrect to describe 3 John Street and its surrounds as unrepresentative of Beaumaris neighbourhood character. Furthermore, the concept of a Beaumaris hinterland distinct from 3 John Street simply does not exist except in Point and Coral Avenues and is not defined in the neighbourhood character policy.

Nearby Emily Street, which is parallel to John Street and runs down to the Concourse, has several excellent examples of early Beaumaris homes built in the 1950's and 1960's and fine examples of bushy gardens. Nearby Agnes Street which has houses abutting the rear north lane of the Concourse is typical of Beaumaris character. On the busy Reserve Road boundary of the Concourse is an area of bush land zoned Public Park and Recreation that reinforces the clear delineation of the residential area character from the large and high density development contained within the Concourse boundaries.

It is incorrect to state the immediate surrounds of the Concourse do not display the typical Beaumaris neighbourhood character. Intensive development is contained within the Concourse and there is no justification for this intensive style of development to seep into surrounding streets. The residents of John Street are entitled to receive the same respect for their amenity as the rest of Beaumaris. This position was affirmed in the VCAT decision *Bardoel Building Company Pty Ltd v Bayside CC* [2009] VCAT 1362 (22 July 2009)<sup>7</sup> for a proposal at 66 Reserve Road which is located three houses from the Concourse boundary. The VCAT member affirmed the Bayside Council that no permit be granted stating:

*Whilst there is strong policy support for the redevelopment of this property with an increased density of housing, the number of dwellings (ie two or three dwellings or more) needs to be determined in the context of the proposed building forms and landscaping. It is important that the buildings on this site and associated pools, spas, patios, decks, driveways and pedestrian walkways are all balanced to ensure that the buildings fit into the neighbourhood which has a strong presence of native vegetation and a planning control and associated policies that seek to maintain and enhance the landscape characteristics of this area. I am not persuaded that this design has achieved that balance and so I have affirmed the Council's decision to refuse to grant a permit for this proposal.*

## **Summary**

The proposal at 3 John Street with its non-complying site coverage and side setbacks will lead to an outcome that will dominate the site and crowd out the opportunity for substantial vegetation. It does not fit in, and falls short of the preferred character where bushy gardens, not the dwellings, dominate the streetscapes.

While State Planning Policy involves growth and change, it also recognises the importance of local urban character and sense of place. Over recent years Bayside Council (and others including residents and ratepayers) have devoted considerable effort and expense undertaking studies and detailed articulation of the preferred character objectives. Unfortunately we still have medium and single developments in Beaumaris that fail these objectives.

In Beaumaris the most dominant preferred character is vegetation and we submit that this proposal does not adequately respond to this fundamental requirement. It does not comply and it does not fit in.

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<sup>1</sup> Ordinary Meeting of Bayside Council 16 March 2010

<sup>2</sup> Ordinary Meeting of Council 13 December 2010

<sup>3</sup> City of Bayside Vegetation Character Assessment Final March 2000, John Patrick Pty. Ltd Landscape Architects

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<sup>4</sup> Amendment C2, Bayside Planning Scheme, Report of a Panel, August 2001

<sup>5</sup> Bayside Neighbourhood Character Review August 2004 Page 110 – 111

<sup>6</sup> Australian Bureau of Statistics - 1301.0 - Year Book Australia, 2005

<sup>7</sup> Bardoel Building Company Pty Ltd v Bayside CC [2009] VCAT 1362 (22 July 2009)  
Last Updated: 31 July 2009

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST VCAT REFERENCE NO. P2991/2008  
PERMIT APPLICATION NO. 2008/360

CATCHWORDS

Application under section 79 of the Planning and Environment Act 1987; Bayside Planning Scheme; Residential 1 Zone; Design and Development Overlay Schedule 2; Special Building Overlay; Vegetation Protection Overlay Schedule 3; Proposal to construct three double storey attached dwellings; Residential opportunity area; Existing and preferred future character; Built form and landscape opportunities.

APPLICANT Bardoel Building Company Pty Ltd

RESPONSIBLE AUTHORITY Bayside City Council

REFERRAL AUTHORITY Melbourne Water Corporation

RESPONDENTS Ms C Walker, Mr W Kell and Beaumaris Conservation Society Inc

SUBJECT LAND 66 Reserve Road, Beaumaris

WHERE HELD Melbourne

BEFORE Rachel Naylor, Member

HEARING TYPE Hearing

DATES OF HEARING 27 March & 17 April 2009

DATE OF ORDER 22 July 2009

CITATION Bardoel Building Company Pty Ltd v Bayside CC [2009] VCAT 1362

ORDER

The decision of the Responsible Authority is affirmed.  
In permit application 2008/360 no permit is granted.

Rachel Naylor

Member

APPEARANCES

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For Applicant Mr R Umbers, Planning Consultant of Peninsula Planning Consultants Pty Ltd  
He called the following witnesses:

Mr J Patrick, Landscape Architect of John Patrick Pty Ltd  
Mr M Reynolds, Arborist of Tri-Dimensional

For Responsible Authority Ms J Bowdern, Legal Support Planner, appeared on 27 March  
Ms N O'Leary, Town Planner, appeared on 17 April  
For Respondents Ms C Walker and Mr W Kell, appeared in person  
Mr C Sutton, Vice President, appeared for Beaumaris Conservation Society Inc

## INFORMATION

Description of Proposal Removal of some native vegetation from the site, the existing dwelling and associated out-buildings and the construction of three double storey attached dwellings. Two dwellings contain three bedrooms and one contains two bedrooms, with floor areas of between 143.3m<sup>2</sup> and 298.8m<sup>2</sup>. The dwellings have a height of between 7 and 7.75 metres. They are each provided with private open space of between 49 and 174m<sup>2</sup> and car parking in either the form of a double garage or a single garage, one of which has a tandem space.

The dwellings are constructed of face brick with bluestone masonry block work and rendered finish, glazing, a flat roof and louvres to the west elevation. Much of the existing 1.8 metre high brick pier and timber infill fence will be retained.

Nature of Application Section 79 Planning and Environment Act 1987

The Council has subsequently advised that it would have determined to refuse the application Zone and Overlays Residential 1 Zone (R1Z)

Design and Development Overlay Schedule 2 (DDO2)

Special Building Overlay (SBO)

Vegetation Protection Overlay Schedule 3 (VPO3) that relates to Beaumaris and Black Rock native vegetation areas.

Reason(s) Permit Required cl 32.01-4 To construct two or more dwellings on a lot in R1Z

cl 44.05-1 To construct a building or to construct and carry out works in SBO

To remove any vegetation native to Australia under section 3 of VPO3

Land description The site is located on the northeast corner of Reserve Road and Hardinge Street.

It has a frontage of 18.29 metres to Reserve Road, a frontage of 48.77 metres to Hardinge Street and a total area of 892m<sup>2</sup>.

It is flat with a gentle rise of 0.1 metres from the south to north. A 1.83 metre wide easement runs parallel and adjacent to the east boundary of the site.

The site currently contains a double storey brick dwelling with a garage fronting Hardinge Street setback 1.8 metres from the street. A 1.8 metre high brick pier and timber fence frames much of the street frontages. There are some trees and shrubs across the frontages and along

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the north and east boundaries of the site. A willow myrtle tree located in the centre of the east boundary and an existing hedge along the north boundary will be retained.

## REASONS

### Nature of Application

This is an application to review the failure by Bayside City Council ('the Council') to grant a permit within the prescribed time for the removal of native vegetation and the development of three attached double storey dwellings at 66 Reserve Road, Beaumaris.

Ms Walker, Mr Kell[1] and Beaumaris Conservation Society all lodged objections to the planning application whilst it was being processed by the Council.

The application was referred to Melbourne Water who did not object to the proposal subject to a number of conditions being imposed including the dwellings being constructed with finished floor levels a minimum of 300mm above the applicable flood level and any new fences being of an open style to allow for the passage of flood waters/overland flow, amongst others. Following the lodgement of this application for review, the Council determined that it would have refused the proposal because of its scale, height and bulk; a loss of amenity to surrounding residential properties; insufficient landscaping opportunities; and the failure to satisfy various provisions of cl 55 including neighbourhood character and landscape objectives.

### The Hearing

The hearing was not completed within the allocated time on 27 March 2009, therefore the hearing continued on 17 April 2009. In the interim period, I inspected the site and the adjoining property at 1 Hardinge Street.

### Reasons for Decision

#### A Residential Opportunity Area

This site is located one block south of the Beaumaris Concourse neighbourhood shopping centre. Edith Street, to the north of the site, separates the shopping centre from the neighbouring residential properties and, in the case of the review site, there are two intervening residential properties separating it from Edith Street. The Strategic Framework Plan at cl 21.04-3 of the Municipal Strategic Statement (‘the MSS’) nominates the area surrounding the neighbourhood centre, including this site and this street and land that extends well beyond it, as a “residential opportunity area”. The MSS goes on to explain the Council’s approach to the provision of additional houses within its municipality is to primarily direct them to residential opportunity areas in and around activity centres[2]. In other words, it is specifically intended that there will be higher density housing within residential opportunity areas.

#### Neighbourhood Character Local Planning Policy

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The MSS also wants to provide greater certainty to residents and developers about the preferred future character sought for its residential areas and has applied the findings of the Bayside Neighbourhood Character Review as part of its Neighbourhood Character local planning policy at cl 22.07. Ms Bowdern highlighted the preferred neighbourhood character for this precinct (Precinct H3) as:

The bushy gardens surrounding the dwellings dominate the streetscapes. Where the topography is hilly, the buildings are set within the landscape, and are sometimes sited to take advantage of water views without dominating the streetscape. Adequate space is provided around dwellings for the retention and planting of vegetation, and indigenous canopy trees are common. Low or open style front fences are usually provided, in order to retain the openness of the front garden to the street.

In order to achieve this preferred future character, there are a series of precinct guidelines comprising objectives and suggested design responses. The Council's submission focused heavily upon the proposal's "non compliance" with these objectives and design responses.

What the Council's submission failed to highlight was the statements at cl 22.07-3 of the Neighbourhood Character local planning policy about exercising discretion in applying the policy. In particular, this section of the policy requires the Council (and, upon review, the Tribunal) to take into account whether the site is located within a residential opportunity area and the extent to which this may alter the relevance of the design responses in considering the merits of a particular proposal. In other words, the failure of this proposal to comply with various objectives and design responses for Precinct H3 needs to be balanced against the fact that this site is located within a residential opportunity area where planning policy in the Planning Scheme states there should be higher density housing encouraged.

In addition, I find that Precinct H3 is quite large and extends almost from the east side to the west side of the municipality. Again, given the broad base of this precinct, compliance with the objectives and design responses in the Neighbourhood Character Policy needs to be tempered against what is in fact the characteristics of this neighbourhood. For example, the area surrounding this site is flat, not hilly; and there are examples of high solid fencing as well as low or open style fencing within the surrounding streets.

#### Vegetation Protection Overlay

In addition to the policy context that encourages higher density development within this area, the site and all surrounding land in both Beaumaris and Black Rock are affected by a Vegetation Protection Overlay (Schedule 3) because, as explained by Mr Sutton, the overlay is based upon a document titled "Bayside Vegetation Character Assessment" that found the private and public spaces contribute equally to the existing vegetation cover that comprises a higher density of canopy and shrub layers than surrounding suburbs; and, as part of this character, dwellings tend to be screened with vegetation that is within both the private and public realms. This planning control is triggered when an application seeks to remove, destroy or lop any vegetation native to Australia. In this instance, some of the existing vegetation to be removed requires planning approval under this overlay but Ms Bowdern acknowledged the

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Council's Arborist did not consider any of this vegetation worthy of retention. One large native tree (a willow myrtle) is to be retained adjacent to the eastern boundary of the site with 1 Hardinge Street. As planning approval is required pursuant to this overlay, it is necessary for me to consider the vegetation protection objectives including:

To prevent the loss of native and particularly indigenous vegetation incurred by development;

To retain the amenity, aesthetic character and habitat value of Australian native vegetation and indigenous vegetation; and

To promote the regeneration and replanting of indigenous species in the Beaumaris and Black Rock area.

VPO3 also requires consideration to be given to the impact of the vegetation removal upon the character of the area and the appearance of the development as well as any proposal to plant new indigenous vegetation on the site.

#### Neighbourhood Character

The Council acknowledged the development of three dwellings on this site is supported by State and local planning policies in the Planning Scheme, particularly as the site is located in a residential opportunity area and just three properties south of Beaumaris Concourse neighbourhood shopping centre. However, the Council submitted urban consolidation and the development of medium density housing cannot be at the expense of the existing neighbourhood character and what the Council has determined as the preferred neighbourhood character.

The Residential 1 Zone and cl 55 both contain a purpose of encouraging residential development that respects the neighbourhood character. The practice note "Understanding Neighbourhood Character"[3] states in simple terms, respect for the character of a neighbourhood means that the development should try to fit it either by respecting the scale and form of surrounding development or by respecting the architectural style of surrounding development.

For the reasons that I have already explained, I am not persuaded it is appropriate to apply each and every objective and design guideline contained in the Neighbourhood Character local planning policy rigidly to the appropriateness of this design response. Rather, I have considered the overarching concern of both the Council and the residents that this development is too big and creates an unreasonable level of visual bulk to the streetscape and the adjoining properties.

I have inspected the site and surrounds and find the location of this site on a corner and just two properties removed from the neighbourhood shopping centre does create an opportunity for, perhaps, a reasonably intensive building form. However, the building form must achieve the right balance between the building form and landscape character of this area. There is no doubt that the landscape of this area is distinctive. It is recognised by VPO3 and the removal

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and retention of existing vegetation does need to be supplemented with new vegetation, including canopy vegetation that can assist to retain the amenity, the aesthetic character and the habitat value of the Australian native vegetation found in this area.

The Council described the prevailing neighbourhood character and pattern of development in Hardinge Street as single low scale dwellings on single lots with a few dual occupancies towards its eastern end that are generally located one behind the other. My interpretation of the neighbourhood character is different to that of the Council. I have already mentioned that both Reserve Road and Hardinge Street contain examples of high solid front fencing. Both roads also contain a number of examples of two storey dwellings that are quite large and prominent on their respective lots. They are also prominent within the streetscapes due to the limited or minimal vegetation in their frontages or alongside their side boundaries, particularly as many of these dwellings are built to one or other of the side boundaries. Having said this, Hardinge Street more so than Reserve Road does still have a strong landscaped theme; and I agree with the submission of Mr Sutton that it is a combination of the landscaping within the public and private realms that has contributed to that theme or existing landscape character.

The retention of the willow myrtle tree close to the eastern boundary of the site is a good planning outcome. However, I agree with the concerns of the Council and the residents that the extent of buildings, patios, paved areas, a swimming pool and spa has limited the opportunities for landscaping. This limitation contributes to the creation of a visual bulk on this site that is at odds with the neighbourhood character.

I agree with Mr Umber's description of the existing character of the surrounding neighbourhood on page 25 of his submission. He points to a number of existing multi dwelling developments in the neighbourhood and certainly many examples of existing two storey multi dwelling developments in the neighbourhood, including in this street. Hence, I agree with him that a double storey building is a characteristic of this neighbourhood.

The length of the site is approximately 48 metres and I agree with the Council that the combination of a ground floor length of 39 metres, a first floor length of 35 metres, and the incorporation of patios, decks, paving, a spa and a swimming pool as well as front pedestrian walkways and driveways for each dwelling creates a significant building form with hard paved areas and limited opportunities for landscaping. I acknowledge Mr Patrick's landscape concept does include approximately seven new canopy trees and there is also the opportunity for the inclusion of new street trees, but I am not persuaded this level of new planting is sufficient to minimise the impact of the visual bulk of the proposed buildings. I am also not persuaded this level of planting is in accordance with the landscape characteristics of Hardinge Street and the objectives of VPO3.

The Council was critical of the non-compliance with various setback requirements contained in the schedule to the Residential 1 Zone, particularly from the north and east boundaries with adjoining residential properties. I am not persuaded it is necessary for there to be technical compliance with all setback standards whether it be in cl 55 or the schedule to the Residential 1 Zone. The emphasis should be on achieving a good design outcome that has regard to the amenity of the adjoining properties.

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The house to the north of the review site contains a number of windows including two bedroom windows and a family room window and a door accessible via the laundry with an outlook toward this site. There are no potential impacts by way of overshadowing if a building on the review site is located close to this boundary. However, the proposed design has elevated patio areas for the middle and rear dwellings that have the potential to cause overlooking into the property to the north and potentially into the family room and bedroom windows. I am not persuaded the existing hedge along this boundary is sufficient to address this impact. This is not a good planning outcome and any redesign should ensure that the potential for overlooking is adequately addressed.

Ms Walker described the proposal as being nothing like the current building landscape in Hardinge Street either in terms of form, structure or style. She stated the setbacks were insufficient and that the proposed landscaping does not sufficiently screen the visual bulk created by the three attached dwellings across the majority of the length of the site. Mr Kell had similar concerns and described the overall size of the development as confronting. The combination of three garages, three attached dwellings, a spa and pool in the front setback from Reserve Road, and the retention of the solid tall fencing around the Reserve Road/Hardinge Street corner combined with three separate driveways and three separate pedestrian entry walkways does create a „hard edge“ to Hardinge Street. In my opinion, this proposal does not fit it into Hardinge Street and its established landscape character.

I agree with Mr Umbers that the planning policies in the planning scheme create the opportunity for a higher density of development on this site given its proximity to the Beaumaris Concourse neighbourhood shopping centre, its location within a residential opportunity area, and its corner location. But this is not an opportunity that is available at all costs. There is still a requirement, pursuant to the purposes of the Residential 1 Zone and cl 55, to create a development that is respectful of the neighbourhood character, whether it be the existing or preferred future character. There is no doubt that this area and this site is suitable for medium density housing but I am not persuaded this site is capable of accommodating three dwellings with appropriate areas for landscaping. I find this development has failed because of the overall extent of building, the attached nature of the buildings and the extent of paving, patios, a pool and a spa, driveways and pedestrian walkways.

There is simply too much proposed on the site and it has not achieved the right balance by contributing both to the higher density of built form character that is emerging in this area around the neighbourhood shopping centre; and by contributing to the established landscape character that is sought to be protected.

#### Stormwater and Overland Flow

Mr Kell expressed concern about the impact this development would have on stormwater runoff, as Hardinge Street is located in an area that is subject to flooding as illustrated by the fact that it is located well within a Special Building Overlay area. However, the Council is satisfied with the detail of this proposal subject to appropriate engineering conditions and Melbourne Water, who is the Authority responsible for considering impacts on flooding, is

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also satisfied with the detail of this proposal. I am not persuaded that there is sufficient reason to refuse this application based on any potential impact upon the overland flows that currently exist in and around this site.

### Willow Myrtle Tree

It was suggested during the hearing that the existing garage on the site needs to be retained in order to protect the roots of the existing willow myrtle tree. The Council, in particular, was concerned about the retention of this garage stating that its 1.68 metre setback from the street frontage was not in keeping with the preferred future character for this neighbourhood. I find the garage is an existing structure within this streetscape and therefore forms part of the existing character of this street. Having regard to the matters of building form and neighbourhood character, I have no particular view as to whether it is appropriate for this garage to be retained or not as I am not persuaded that the rest of the proposed building form is appropriate. If a new design can sympathetically incorporate this garage into the design of a dwelling, then it may be appropriate for it to be retained. However, any new design will need to be considered on its merits.

What I am not persuaded about is the necessity to retain this garage in order to retain the willow myrtle tree. Mr Reynolds gave evidence that the footings and slab of the garage (rather than the whole structure) would need to be retained as he is uncertain exactly where the roots of the tree are (i.e. whether they are in and around the footings) because he has not undertaken any excavation around the garage to ascertain the exact location of the roots. Mr Reynolds also stated it might be possible to remove some of the slab as well if investigation/excavation was undertaken to establish exactly where the roots are located. In other words, I find there is the potential for the garage to be removed, or at least the walls and roof of the garage to be removed, thereby creating potentially new or different design opportunities in regards to the redevelopment of this site for medium density housing.

### Conclusion

Whilst there is strong policy support for the redevelopment of this property with an increased density of housing, the number of dwellings (ie two or three dwellings or more) needs to be determined in the context of the proposed building forms and landscaping. It is important that the buildings on this site and associated pools, spas, patios, decks, driveways and pedestrian walkways are all balanced to ensure that the buildings fit into the neighbourhood which has a strong presence of native vegetation and a planning control and associated policies that seek to maintain and enhance the landscape characteristics of this area. I am not persuaded that this design has achieved that balance and so I have affirmed the Council's decision to refuse to grant a permit for this proposal.

Rachel Naylor  
Member

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[1] Ms Bowdern advised that there had been an error in the Council's Practice Note 2 information, which excluded Mr Kell as an objector. She confirmed that Mr Kell did lodge an objection with the Council and therefore he is a party to this proceeding.

[2] Refer to cl 21.05-1, Overview of Housing in the MSS.

[3] General Practice Note of the Department of Planning and Community Development, December 2001.

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